

EX PARTE OR LATE FILED

STATE OF CALIFORNIA

PETE WILSON, Governor

PUBLIC UTILITIES COMMISSION

550 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 1, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554RECEIVED
MAR - 1 1995
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Re: PR Docket No. 94-105; Ex Parte Presentation

Dear Mr. Caton:

On March 1, 1995, President Daniel Wm. Fessler, Commissioner P. Gregory Conlon, Richard Smith and John M. Leutza of the California Public Utilities Commission met with Chairman Reed Hundt, Commissioner Susan Ness, Commissioner Andrew Barrett, each of their advisors, to discuss California's Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates. A copy of the attached materials was presented.

In accordance with 47 C.F.R. Section 1.1206(a)(1), two copies of the attached materials are hereby submitted to your office.

Sincerely,

John M. Leutza

John M. Leutza

No. of Copies rec'd
List ABCDE

041

RECEIVED

MAR - 1 1995

FEDERAL COMMUNICATIONS COMMISSION

California Wireless Petition

FCC PR Docket No. 94-105

California Public Utilities Commission

March 1, 1995

Ex-Parte Presentation

Two Copies of this presentation have been filed with the Secretary of the FCC

Continued Regulatory Authority is Necessary to Foster Competition in the Near Term

- The CPUC is proceeding to unbundle cellular bottleneck services. Our unbundling program will:
 - allow alternate providers to interconnect their switches with wholesale carrier switches;
 - create market-based unbundled rates;
 - initiate a pilot program to test technical compatibility of interconnecting switch in March 1995.
- California is the only state to order cellular unbundling.
- The unbundling program is consistent with FCC's Rules Proposing Equal Access and Interconnection Obligations Pertaining to Wireless Services (RM 8012).
- California determined that it needed eighteen months to implement this program and allow sufficient time for switch-based competition to emerge.

California Actively Encourages Competition and Consumer Choice in the Wireless Industry

- California's current oversight of the cellular industry is minimal:
 - rates can be changed on same-day notice;
 - carriers have flexibility to lower or raise rates below market-based cap.
- California has proposed to authorize the bundling of cellular service and equipment.
- California has supported deregulation of fully competitive wireless services.
- California is the only state that has not sought open-ended authority.

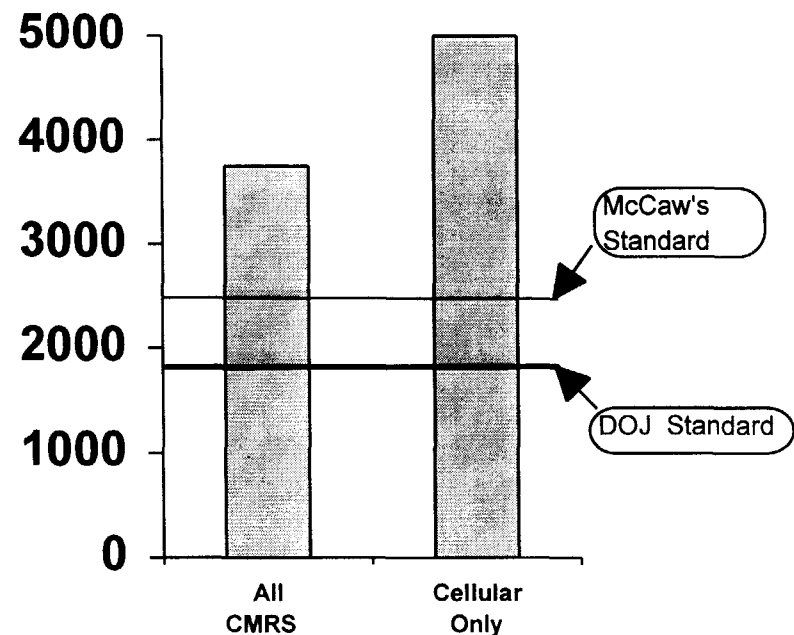
Entry Barriers and Interlocking Ownership Insulate Cellular Duopolists from Competitive Pressures

- Barriers to entry have protected incumbents. The effects of limited entry will remain until other carriers, such as broadband PCS, can deliver wireless service.
- California has asked for authority to regulate rates for a limited time, which would perhaps permit competitive alternatives to cellular service to develop.
- Interlocking ownership blunts incentive to compete:
 - AirTouch and McCaw are partners in San Francisco and "competitors" in Los Angeles;
 - The wholesale carriers' mutual financial interest is best served by avoiding price competition.

The Cellular Industry is Highly Concentrated by Any Measure

- According to the measure of market concentration employed by the DOJ and FCC, the cellular market is highly concentrated.
- The DOJ merger guidelines consider a market highly concentrated if the Herfindahl Hirshman Index (HHI) is over 1800.
- The cellular market is highly concentrated by alternative standards proposed by the cellular industry.
- The industry is highly concentrated when measured by capacity (as the cellular carriers argue) output or sales.

**HHI Index for Wireless
Two Way Voice Services
Capacity Available in One Year**



California's Urban Cellular Carriers Earn Supracompetitive Returns

- Cellular carriers earn rates of return in excess of firms in other telecommunications markets. In fact, these rates of return are much higher than those earned by firms in competitive markets:
 - California's urban cellular carriers earned an average rate of return on net plant of 31% between 1989 and 1993, compared to 14% for the telecommunications service industry as a whole.
 - Los Angeles Cellular Telephone earned an average of 56.2 percent on net plant over the past five years.
- High values for cellular licenses reflect expectation of duopoly rents:
 - Cellular license values far exceed broadband PCS licenses values because PCS bidders anticipate a much more competitive market than cellular carriers currently enjoy.
 - Cellular licenses are valued at \$200 per Pop compared to \$15 per pop for broadband PCS after 88 rounds of bidding.

There is No Evidence of Price Competition between Cellular Duopolists

- Carriers' claims of price reductions are based on bucket plans where consumers:
 - pay whether they use airtime or not;
 - are subject to termination fees; and
 - sacrifice choice.
- Revenue per MOU for California's cellular carriers has fallen by just 5.6% in real terms between 1989 and 1993 or 1.4% per year.
- Basic cellular rates have remained high despite declining costs.

The CPUC has Protected California Consumers

- The claims that regulation has led to higher rates and has cost California consumers millions of dollars annually are based on fatally flawed economic analysis. The economic analysis underlying this contention:
 - disregards data that does not support its conclusion;
 - uses the wrong price data;
 - misuses economic variables; and
 - fails to establish any causal relationship between regulation and rates.